

FINAL MINUTES

**THE NEW YORK STATE BAR ASSOCIATION
COMMERCIAL & FEDERAL LITIGATION SECTION
EXECUTIVE COMMITTEE**

Minutes of the Meeting of the Executive Committee of the Commercial & Federal Litigation Section held in accordance with the rules of the New York State Bar Association on Wednesday, February 15, 2017.

Members Present:

Mark A. Berman, Chair
Robert Holtzman, Vice Chair
Tracee Davis
Tony Harwood
Laurel Kretzing
Courtney Rockett
Paul Sarkozi
Hon. Cathy Seibel**

Members Participating by Phone:

Mitch Katz, Chair Elect
Jamie Sinclair, Secretary
Deborah Edelman, Treasurer
Gregory Arenson
James Bergin
Beth Gould
Sandra Rampersaud
Stephen T. Roberts
Natasha Shishov

**indicates non-executive committee member*

*** indicates guest speaker for the meeting*

The meeting came to order at 6:45 p.m.

Cocktail Party

Prior to the commencement of the Executive Committee meeting, the Section hosted a cocktail party for the judges and law clerks of the White Plains Federal Courthouse as well as for local commercial practitioners. Chair Mark Berman spoke to the attendees about the activities and programming of the Section and encouraged attendees to join the Section. Over forty people attended the cocktail party and Judge Seibel's remarks.

Welcoming Remarks

Section Chair Mark A. Berman welcomed attendees to the meeting and thanked them for their participation. This meeting was held in White Plains, New York, at the U.S. District Courthouse for the Southern District of New York located in Westchester. He asked all members participating by phone to send Section Secretary Jamie Sinclair an email confirming their attendance, and introduced the guest speaker for the meeting.

Remarks by Guest Speaker Hon. Cathy Seibel, U.S. District Judge for the Southern District of New York

The Hon. Cathy Seibel began by applauding the high caliber of lawyering and distinguished judges practicing in the White Plains Courthouse, and invited all Executive Committee members to litigate in the White Plains Courthouse. Judge Seibel then discussed the role of mediation in the Southern District, stating that there are over 300 mediators available all of whom are required to take a certain amount of cases per year. The Judge noted that, while many attorneys think that mediation slows a case down, the Southern District has found that the average total time between referral to a mediator and either settlement of the case or it returning back to the judge is approximately 92 days. Further, Judge Seibel noted that the Court has noted that over 60% of the cases that go to mediation settle in mediation.

Judge Seibel specifically addressed two pilot mediation programs underway in the White Plains Courthouse. The first is a mediation program for Section 1983 actions, which seek to hold municipalities liable for the conduct of their employees. The Judge noted that, although final numbers were not yet available, it appears that a record number of these cases are settling through the pilot program. The second pilot mediation program is for cases brought under the Fair Labor Standards Act, which cases currently constitute a large (over 10%) of the total docket of the White Plains Courthouse. Although final numbers also were not available, the Judge noted that these cases also appear to be settling at a higher rate through the use of the pilot program.

The Judge stated that the courthouse seeks to have a diverse group of mediators available for parties to select from. Judge Seibel encouraged attorneys interested in volunteering as mediators to apply to become a mediator. Finally, the Judge encouraged attorneys practicing in the Southern District, who have gone through the mediation process there, to provide feedback to the mediation supervisor, Rebecca Price. The Judge solicited feedback from Executive Members present at the meeting regarding what they think works, and what could use improvement, with regard to the mediation program as it currently operates. Section Chair Mark Berman thanked Judge Seibel for her remarks and encouraged her to reach out to the Section if it can be of any assistance to the Court.

Approval of the January 10, 2017 Meeting Minutes

The January 10, 2017 meeting minutes were unanimously approved by all Executive Committee members present.

Review of the Evening with the Second Circuit and the Section's Annual Meeting

Section Chair Mark Berman provided an overview of the Section's Annual Meeting and "Evening with the Second Circuit," held the night before the Annual Meeting. He reported that over 90 people attended the Second Circuit Program and that the evening was a fantastic success. As to the Annual Meeting, over 70 judges were in attendance, and the CLE programs and luncheon received great reviews. Over 350 people attended this year's Annual Meeting, and it was particularly fantastic to have both Chief Judge Katzmman and Chief Judge DiFiore in attendance.

Update on the Upcoming Spring Meeting (May 19-21)

This year's Spring Meeting will be held in Saratoga Springs from May 19-21. Chair Elect Mitch Katz provided a brief overview of the four programs planned for the weekend which will address trade secret defense, restrictive covenant litigation, a rule and caselaw comparison and update concerning Commercial Division rules and the Federal Rules of Civil Procedure, and evidentiary issues relating to electronic fabrication, alteration and fake news. Additionally, Mr. Katz noted that he was seeking to have seven sponsors participate in this year's Spring Meeting, with four focusing on electronic support and software in the practice of law. The honoree for the Fuld Award has not been selected yet.

Update on the House of Delegates Meeting

Section Chair Mark Berman provided an update on the House of Delegates meeting, which was attended by, inter alia, Mr. Berman, Mitch Katz, and former chairs Jim Wicks and Tracee Davis. The House of Delegates voted in support of adding a new diversity and inclusion and elimination of bias CLE requirement, which the Section previously issued a report in favor of. The House of Delegates meeting also addressed what topics NYSBA would support if a Constitutional Convention was held as it relates to the Judiciary Act. Mr. Berman reminded Executive Committee members that the Section approved a report at its January Executive Committee meeting addressing three specific areas of reform with regard to Commercial Practice that the Section would support if a Constitutional Convention were held.

Upcoming CLE Events and the Commercial Litigation Academy

Section Chair Mark Berman advised that the upcoming Commercial Litigation Academy expects to have over 200 people in attendance, including the 5 women Kaye Scholars whose admission will be paid for by the Section. The faculty and

curriculum for the Commercial Litigation Academy is set and publicity will begin soon.

Additional upcoming CLEs of interest include “Cross Fertilization of Best Practices Recommendations by ComFed and the DR Section for Improving Dispute Resolution in the Courts and in Arbitration” which will be held on March 13, 2017 at Fordham Law School; “Legal Ethics in the Digital Age”, which will be held on March 30, 2017 at the Executive Conference Center in New York City; and “Securities Arbitration and Mediation 2017: The Courage to Simplify”, which will be held on April 6, 2017 at the New York Society of Security Analysts.

Brooklyn Law School Event

Section Chair Mark Berman advised that the Section, as part of its outreach efforts is planning an event to be held at Brooklyn Law School on April 19th. Kings County Commercial Division Justice Lawrence Knipel and Sylvia Ash will be in attendance, and Kings County practitioners will be encouraged to attend. The event is being spearheaded by Gregory LaSpina, the new District Leader for Kings County.

Upcoming Committee Review

Section Chair Mark Berman advised that over the next year the officers will be reviewing and attempting to reinvigorate various committees of the Section and to enforce terms limits in order to spread leadership roles to more Section members.

The meeting adjourned at approximately 7:45pm.